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# Genetic Ties and the Family: The Impact of Paternity Testing on Parents and Children

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# **Genetic Ties and the Family: The Impact of Paternity Testing on Parents and Children**

## **Book Review**

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**Genetic Ties and the Family: The Impact of Paternity Testing on Parents and Children****Book Review**

Rapid advances in genetics and new reproductive technologies have raised countless bioethical, medical, and legal questions with particular reference to the use or abuse/misuse of paternity test results. While “Who’s your daddy?” has been an age-old question, this matter has taken on a whole new dimension in the twenty-first century with widespread media attention fueling an entire cottage industry surrounding paternity testing. This media coverage is indicated in Dorothy Nelkin’s (a former professor of sociology and law at New York University whose work focused on examining the effects of scientific technology on society) excellent introductory chapter entitled “Paternity Palaver in the Media: Selling Identity Tests” whereby she discusses an episode of The Montel Williams Show in which a divorced couple squabble over custody arrangements for their child. However, during the course of the episode, paternity test results announced on-air indicated her ex-husband was not the child’s “biological” father. Intense media attention surrounding paternity test results reached saturation levels last February with the death of model/actress Anna Nicole Smith and the subsequent custody battle between Larry Birkhead and Howard K. Stern for Smith’s daughter Dannielynn. It is in this light that Genetic ties and the family: The impact of paternity testing on parents and children is a timely exploration of the ethical, legal and social implications of DNA paternity testing in the new millennium.

The book is broken down into two parts each containing six chapters, which includes writers from diverse disciplines such as bioethics, history, law, psychology and social work. The first part of the book broadly surveys the shifting ground of the parent-child relationship while the second part focuses on parentage in American family law. Unfortunately, only certain chapters

of the book really stand out and offer the reader something to ponder. Most notably, Dan Wulff's chapter entitled "Family Therapists and Parentage Testing" provided a sample of open-ended questions that could be used by family therapists to discern not only how family members feel about the issue of paternity testing, but which would allow for an open and respectful dialogue about the potential outcomes of such test results and whether such results would meaningfully resolve or exacerbate existing issues within a particular family. The asking of such questions prior to undergoing DNA paternity testing allows for relevant family members to provide truly informed consent about whether or not they would like to proceed with the test.

On a side note, this line of questioning could be considered akin to the line of questioning that should be asked by genetic counselors prior to prospective parents undergoing prenatal genetic screening procedures. Attempting to detect the presence of a fetal disability by means of prenatal screening techniques has raised some interesting ethical questions concerning how information surrounding issues of disability is communicated to prospective parents. Many disability rights advocates have argued that disability appropriate education and information about the availability of support services is lacking from the dialogue that exists between genetic counselors and prospective parents, which has therefore led to a lack of true reproductive choice and informed consent (Parens & Asch, 2003; Patterson & Satz, 2002; Asch, 2000). While it has not been explicitly stated as a policy recommendation in this book, having such a dialogue before undergoing DNA paternity testing should be made a compulsory component of the testing procedure (whether court-ordered or not) and would help to ensure that each relevant family member provides truly informed consent. Such an above scenario would be a far more preferable and sensitive approach to the matter as compared to the common situation described by Lori B. Andrews (a distinguished professor of law at Chicago-Kent College of Law whose work has

involved researching, writing and setting policies in the area of genetic technologies) in her chapter entitled “Assisted Reproductive Technology and the Challenge for Paternity Laws” whereby “divorced men take their children to Lincoln Park to play, then they pop into a nearby hospital for DNA testing to determine whether the child is really ‘theirs’” (187).

Furthermore, Andrews indicates that the trend of looking towards biology and genetics to determine parentage is at odds with the current case law and statutes surrounding assisted human reproduction. She argues that “[m]ost of the state statutes governing artificial insemination specifically refer to the insemination of a wife and make her husband the legal father” (199) and therefore parentage is determined by the intention to bring and raise children into the world rather than the existence of a genetic relationship between father and child. Andrews also focused on the issue of posthumous reproduction, which is becoming increasingly common as men may store sperm in a sperm bank prior to undergoing medical procedures such as chemotherapy that could result in sterility or before entering active military service. However, Andrews notes that there is no consensus on the time limitations or criteria whereby posthumously conceived children can inherit under estate laws or receive Social Security benefits as court cases in different states have resulted in different outcomes.

Research from Wertz (1992) has indicated that most geneticists would be unwilling to disclose a finding of false paternity to fathers undergoing carrier testing. Wertz (1992) also predicted that the proliferation of genetic tests would result in more cases of false paternity being uncovered. Perhaps, guidelines should be established for geneticists with respect to unexpected false paternity findings in the course of carrier testing so as to ensure that the duty to avoid harm is upheld over the duty to disclose information. Several authors in the text noted the case of *Wise v.*

Fryar, 2002 whereby the father underwent carrier testing when one of his four children was diagnosed with cystic fibrosis and it was later revealed that he was not the “biological” father of three of his children.

Unfortunately, not all of the issues presented in the book were fully fleshed out and there were significant gaps remaining from the text. For example, the issue of regulating laboratory practices in paternity testing is given very brief attention towards the end of the final chapter entitled “Translating Values and Interests into the Law of Parentage Determination” by Mark A. Rothstein. However, laboratory practices pose a significant dilemma, especially considering that many paternity testing companies are for profit mail-order operations that are advertised through the internet and are of dubious merit. A second issue that was given short thrift is that technology is constantly changing and that what is top-notch testing today can become quickly obsolete in the future. For instance, there was a case described in the book where two men had both tested negative to being the father of a child, but several years later a positive genetic match indicated one of the men was in fact the biological father. That being said, as this technology continues to advance, there might be a tempting potential to open a Pandora’s Box by revisiting paternity cases that had previously been settled.

In closing, we felt that an opportunity was lost in coming-up with clear policy recommendations regarding the use of DNA paternity testing. It is our contention that guidelines should be established for geneticists to ensure that unexpected false paternity findings are not disclosed to those undergoing carrier testing. When an individual provides informed consent to undergo carrier testing, they are only consenting to be tested to see if they are a carrier for a particular disability. Additional tests, such as paternity tests should not be conducted during the course of

carrier testing if the individual has not been provided with informed consent. It is also our contention that limits should be placed on the number of times (regardless of the advances in technology) in which an individual must submit to repeated paternity testing if they have already tested negative to being a genetic match. For instance, a woman has claimed that the former basketball star Michael Jordan fathered her child and is asking a judge to subject him to a third paternity test, despite two previous paternity tests in which he tested negative. Lastly, policy information from international jurisdictions would have been helpful in providing a comparison or insight into how other countries have, or are attempting to, come to terms with the possible outcomes of such test results. Therefore, while this book did raise some very interesting questions, it failed to provide clear policy recommendations with respect to the disclosure of unexpected false paternity findings and the issue of repeated paternity testing in which an individual has already tested negative.

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